

# United States District Court Southern District of Texas

Case Number: 05CV1847

## ATTACHMENT

Description:

☐ State Court Record      ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 14 of \_\_\_\_\_

☐ Exhibit to: \_\_\_\_\_  
number(s) / letter(s) \_\_\_\_\_

Other: \_\_\_\_\_

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1           A.     Yes, I do.

2           Q.     What did the judge say? Do you  
3 recall?

4           A.     Basically in so many words the judge  
5 asked us at the end of the testimony yesterday  
6 to not discuss this with our friends, family,  
7 other home members.

8           Q.     Would the discussions that you've had  
9 on, you know, whatever you want to call  
10 credibility, qualifications or experience of  
11 these alleged expert witnesses in general and  
12 the specific things that they did in this case,  
13 would that have an effect on, the discussions  
14 that you've had, would that have an effect on  
15 how you reach a decision in this case?

16          A.     I'm sorry, I lost you.

17          Q.     Okay. The case is not over. You say  
18 you have not made up your mind?

19          A.     That's correct.

20          Q.     Would these discussions that you may  
21 have had with three or four other people, would  
22 that have an effect on how you eventually decide  
23 this case?

24          A.     Eventually, yes.

25          Q.     Okay, could you explain that to me?

1           A.    Well, I would say that talking about  
2 the credibility of the witnesses that we had out  
3 in the hallway, those were some of the points  
4 that I think would be brought up eventually  
5 during our final deliberations, and I think we  
6 probably -- I think some of those same points  
7 that were brought up in the hallway would have  
8 been brought up during the final deliberations.  
9 Whether or not those facts would actually affect  
10 the outcome, I don't know.

11           Q.    Well, I guess what I'm saying, I think  
12 the bottom line of the question is probably have  
13 you made up your mind yet?

14           A.    No.

15           Q.    Obviously, if you talk about  
16 credibility, that's something that's going to be  
17 talked about at the end of the case, once you  
18 got the evidence, all the evidence, once you got  
19 the court charge altogether. I'd be amazed if  
20 you didn't. I'd also be amazed if jurors didn't  
21 discuss, well, this particular witness had --

22           MR. HILL: Could we limit to question  
23 and answer, not trying--

24           MR. SMYTH: Oh, hey, hey, hey, hey.

25           MR. HILL: Instead of what Mr. Smyth

1 would like to be amazed by.

2 THE COURT: Let's move along.

3 BY MR. SMYTH:

4 Q. You haven't made up your mind at this  
5 point?

6 A. That's correct.

7 Q. Okay. Nobody, as far as you know, has  
8 made up their mind either?

9 A. That's correct.

10 Q. The type of things that were discussed  
11 out there would be the type of things you expect  
12 to be discussed again; is that correct?

13 A. That's correct.

14 Q. But at this point they haven't  
15 influenced you; is that correct?

16 A. That's correct.

17 Q. Can you set aside anything that you  
18 talked about in this discussion with three or  
19 four of the folks and wait until you hear all  
20 the evidence that the judge gives you, the  
21 charge, to hold your deliberations?

22 A. Yes.

23 Q. And just make your decision based upon  
24 what the result of the deliberations are once  
25 you get the case, once you get the court's

1 charge?

2 A. Yes.

3 Q. Okay. Could you promise not to  
4 discuss this case any further?

5 A. Yes.

6 Q. Until you get all evidence, get the  
7 charge?

8 A. Yes.

9 Q. Could you also promise all of us that  
10 you won't discuss what went on inside this room?

11 A. Yes.

12 Q. Do you think the conversation that we  
13 had as well as the conversation you had with the  
14 Defense attorneys is going to have any effect on  
15 how you would determine this case?

16 A. No.

17 MR. SMYTH: Nothing further, Your  
18 Honor.

19 BY MR. HILL:

20 Q. Mr. Johnson, what type of comments, if  
21 any, were made regarding a witness' motive for  
22 testifying the way they do in either the  
23 abbreviated conversation that took place in the  
24 hallway or when you came into the waiting area  
25 and several more people joined the group? Were

1       there some comments made regarding basically a  
2       person's bias or motive in testifying a  
3       particular way in a case?

4             A.     I wouldn't -- I'm not a hundred  
5       percent sure what you're asking again.

6             Q.     Well, do you recall any comments being  
7       made in your presence, either by you or others?

8             A.     Right.

9             Q.     That, well, you know, it stands to  
10      reason that an individual paid by the defense  
11      would basically parrot or give whatever  
12      testimony the defense wants in a case?

13            A.     I don't recall a conversation like  
14      that, no.

15            Q.     Do you recall any comments like that,  
16      not necessarily a conversation?

17            A.     No, quite honestly, I don't.

18            Q.     Was there any discussions about the  
19      State witnesses not having any reason to lie?

20            A.     No, I don't recall any comment like  
21      that, either.

22            Q.     Tell me, and I don't mean to be unfair  
23      in asking this question, how is it that you're  
24      going to be able to basically whitewash your  
25      mind or wash out from your memory conversations

1       that took place in the hallway initially,  
2       additional conversations that took place in the  
3       waiting room once you're given the actual case?

4           A.    I'm not saying I will be able to  
5       whitewash my mind.

6           Q.    And I want to withdraw the word  
7       whitewash. That was not what I meant to say.  
8       You know, just cleanse your brain of what it was  
9       that you discussed in those two meetings.

10          A.    My opinion is that the things that  
11       were discussed out in the hallway were the same  
12       types of things that will be discussed during  
13       the deliberations; therefore, I think they are  
14       relevant as to whether or not my mind will be  
15       cleansed or that will bias my opinion towards  
16       future witnesses, I don't feel.

17          Q.    Have you already reached some  
18       conclusions, though, based on what you heard  
19       thus far?

20          A.    I have leanings, but I have not made a  
21       conclusion.

22          Q.    Were those leanings helped or hindered  
23       by the conversations that you had in the  
24       hallway, then again in the waiting room?

25          A.    I don't really think they truly had an

1 effect.

2 Q. Okay. Thank you, sir. Appreciate it.

3 MR. SMYTH: No further questions, Your  
4 Honor. Thank you very much, Mr. Johnson.

5 THE COURT: Do me a favor, have a seat  
6 out in this hallway and, obviously, don't talk  
7 to Mr. Baker about this.

8 MR. HILL: Judge, if it please the  
9 court, could we ask Mr. Johnson to accompany the  
10 bailiff just long enough to perhaps tell the  
11 bailiff which of the other individuals were  
12 there?

13 THE COURT: Well, let's do this. One  
14 of them is a school teacher. We can identify  
15 the school teacher off the slip, that's female  
16 school teacher.

17 MR. SMYTH: Really, female school  
18 teacher and the guy that has page boy haircut.

19 THE COURT: You know, Freddy, the guy  
20 with the blonde hair.

21 THE BAILIFF: Lady with blonde hair?

22 THE COURT: Fall in back.

23 THE WITNESS: There is a male school  
24 teacher who was sitting -- there was two --

25 THE COURT: Female school teacher.



1                   THE JUROR:   Female school teacher.  
2   There is the male school teacher, but, I don't  
3   know, I think he was there early this morning.  
4   Then there was also a gentleman with short hair  
5   in the front, fairly long in the back with  
6   glasses.

7                   THE COURT:   You know which one that  
8   is?

9                   MR. HILL:   One of the gentlemen I  
10   believe.

11                  THE COURT:   Names have not been  
12   brought up.

13                  MR. SMYTH:   Here's a teacher.   It's  
14   male.   Then there is a Cheryl, female.

15                  THE BAILIFF:  Teacher?

16                  THE CLERK:   Uh-hum.   That's it.   Those  
17   are the only two teachers.

18                  THE COURT:   There was only two  
19   teachers that I am aware of.

20                  THE COURT:   Ask Cheryl to come in  
21   please, Freddy.   Stand by the door.   If Cheryl  
22   was her, just nod to me.

23                  THE JUROR:   (Nods).

24                  THE COURT:   Tell me your name.

25                  THE JUROR:   Welfl.

1 THE COURT: Ms. Welf, you have done  
2 nothing wrong to get you in trouble, okay.

3 THE JUROR: Thanks.

4 THE COURT: So relax. However, we do  
5 have to talk to you this morning about the  
6 conversations that were held before we started  
7 trial.

8 THE JUROR: Okay.

9 THE COURT: That's what we're doing.

10 THE JUROR: Okay.

11 THE COURT: In order to do that, I got  
12 to put you under oath.

13 (Oath administered to juror).

14 THE COURT: When these lawyers ask you  
15 the questions, you cannot get in trouble, no  
16 problem, but we got to know what you talked  
17 about. So I will let them ask you.

18 Mr. Hill, Mr. Smyth. All right.  
19  
20  
21  
22  
23  
24  
25

1 EXAMINATION

2 BY MR. HILL:

3 Q. Good morning, ma'am. How are you?

4 A. Okay.

5 Q. I'd like to ask you some questions.

6 First of all, you remember the twelve person  
7 jury that has been seated and has been listening  
8 to evidence in the State of Texas versus Gerald  
9 Eldridge; correct?

10 A. Right.

11 Q. And we're currently in a kind of a  
12 make shift courtroom on the seventh floor of the  
13 criminal courthouse where we've been taking the  
14 testimony.

15 A. Right.

16 Q. Do you recall being a part of a group  
17 of jurors, not the whole twelve people but a  
18 group of jurors that sat out in the hallway  
19 outside of this courtroom earlier this morning?

20 A. Almost as soon as I got here, we came  
21 into this room.

22 Q. Okay. Was there a group of people,  
23 though?

24 A. There were about four of us out there.

25 Q. All right. And could you tell us do

1       you know the identity by name or description of  
2       any of the other individuals?

3             A.     The first gentleman that you brought  
4       in here, he was sitting out there, and I think  
5       the second gentleman that you brought in was  
6       sitting out there. And I don't know their  
7       names.

8             Q.     Okay. Did you ride up on the elevator  
9       with one of them?

10            A.     No, I came up by myself.

11            Q.     Okay. All right. Could you tell us,  
12       just tell the judge, the content of any, first  
13       of all, any comments that you made with the  
14       other group of jurors out in the hallway before  
15       coming into the waiting area this morning to the  
16       waiting room.

17            A.     Out here?

18            Q.     Yes, ma'am?

19            A.     Nothing was said that I remember  
20       because I just came in and we went right into  
21       here. But when I was here, somebody said  
22       something about what he had, the offense that he  
23       had committed, and I said, well, if you really  
24       wanted to know you could go to the library and  
25       look at the newspaper from January, 1993.

1 Q. Right.

2 A. I didn't say I had, and I haven't,  
3 it's not that important to me, but if we really  
4 wanted to know, because the person that  
5 testified yesterday he said that the gentleman  
6 had called him two weeks after the crime.

7 Q. Right.

8 A. So we knew when the crime was  
9 committed.

10 Q. Sure.

11 A. So I just said, well, if you really  
12 wanted to know you could go to the library and  
13 use newspapers and look it up, but none of us  
14 that I know of have done that.

15 Q. Do you know which gentleman or was  
16 there a woman that made that particular comment  
17 about the type of crime that the person was  
18 charged with?

19 A. Oh, gosh, I'd be lying if I said.

20 Q. But it was one of the jurors?

21 A. That said, you know, I don't even know  
22 how it all came up, and I made that comment, to  
23 be really honest. I don't want to say who said  
24 what. I just really don't remember. I just  
25 remember what I said.

1           Q.    Let's back up.  Whoever said what they  
2 said, was that person a juror in this case?

3           A.    Yes.  We were all jurors sitting in  
4 there.

5           Q.    What was said?

6           A.    Golly, let's see.  Something again to  
7 the effect of what he had done, and I don't  
8 remember who said it, what the gentleman had  
9 done, and I just right away said that, well, if  
10 you really wanted to know you could go to the  
11 library and look it up.

12          Q.    The individual that said I sure wish I  
13 knew what this man did or is charged with doing,  
14 how did it come up?

15          A.    I don't remember.  I think we all have  
16 a curiosity as to what crime he has committed,  
17 and I think that it came up like that, but none  
18 of us know what it is, and I might of said  
19 something I've seen his name in the newspaper, I  
20 cannot remember what it was for because I do  
21 remember his name, but I don't have any earthly  
22 idea what it was for.

23          Q.    Okay.

24          A.    You know.

25          Q.    You made a comment, and I want you to

1 be honest with us because this is very important  
2 for the judge to be hearing this. Like he said,  
3 nobody gets in trouble.

4 A. Right.

5 Q. This is the essence of these  
6 proceedings is to be open and candid with us.  
7 You made the comment about what offense he  
8 committed.

9 A. Right.

10 Q. Or what he did. I mean, in your mind  
11 is it a foregone conclusion that the defendant  
12 actually did commit an offense, we're just here  
13 to determine whether he should be standing trial  
14 because of his mental state right now?

15 A. No. I think that all of us have said,  
16 well, we haven't heard all the evidence, you  
17 know. We talked about that. We haven't heard  
18 all the evidence, and we have all said that  
19 would it be us that was trying to decide if we  
20 were competent or not we would want that jury to  
21 listen to everything that they had to say.  
22 That's what we said. And, you know, I can't  
23 tell you everything that's been said. You might  
24 of heard that. And I was probably laughing when  
25 I said that. And it's not that we take it

1 callously or anything like that, because we do  
2 want to try to hear the information and give him  
3 the fairest shake that we can because if I'm  
4 ever in that position I would want that done for  
5 me

6 Q. Okay.

7 A. And I think that's how, you know, big  
8 majority of us feel. Not everybody talks as  
9 much as, there is four or five of us that talk  
10 more than the others. That's the feeling that  
11 we all have expressed.

12 Q. So I take it that you really don't  
13 recall there being much of anything said in your  
14 presence out in the hallway?

15 A. No. I wasn't there maybe thirty  
16 seconds before.

17 Q. Was anything said?

18 A. No.

19 Q. Let's clarify that.

20 A. No.

21 Q. Was there another woman standing there  
22 at the time, do you know?

23 A. I think there was another lady juror  
24 out there with us.

25 Q. Okay. All right. Once you came into



1 the waiting area outside the courtroom here that  
2 the bailiff unlocked the door, you all proceeded  
3 in, could you say whether or not the entire  
4 twelve people were in there all at the same  
5 time?

6 A. They weren't.

7 Q. And was there discussions had, excuse  
8 me, in your presence, about the various  
9 witnesses that had been called to testify up to  
10 the present time?

11 A. The only thing that we talked about  
12 was his crime, what that one witness had said  
13 about he called him two weeks after he committed  
14 the crime. That was the only witness we  
15 discussed.

16 Q. Was there any discussion at all in  
17 your presence that you recall about credibility  
18 of witnesses in general?

19 A. No.

20 Q. Any discussion about why a witness  
21 would testify in a particular way? In other  
22 words, that they would have a motive to testify  
23 favorably to the side that called them?

24 A. No.

25 Q. Was there any discussion about payment

1 of the witnesses or the witnesses receiving  
2 compensation for their testimony?

3 A. No.

4 Q. How long were you inside the waiting  
5 area here before the judge brought you in here  
6 this morning?

7 A. I got here about nine, or ten after  
8 nine.

9 Q. By your watch, what do you have?

10 A. I have 11:20, about two hours.

11 Q. And during that two hour period of  
12 time, have there been discussions about the  
13 case?

14 A. The only thing we said was what we did  
15 about if we really wanted to know. Nothing has  
16 been discussed about whether he is or is not  
17 incompetent this morning, that it's just been  
18 discussed about if we wanted to really find out  
19 what crime he supposedly committed. That's all  
20 that has been discussed in my presence this  
21 morning.

22 Q. All right. So is it fair to say that  
23 there are different groups of people talking  
24 among themselves, not necessarily as an entire  
25 group? In other words, how are people relating

1 to one another out there? Is everybody just  
2 like kind of having a chance to say something,  
3 everybody else quit listening, or if are you  
4 maybe talking to the person immediately to your  
5 left or right, somebody else maybe having a  
6 conversation across the room?

7 A. Well, I think we pretty much talk in a  
8 group pretty much, not at all times. I haven't  
9 really kept track of what everybody is doing.

10 Q. Okay. I'll pass the witness. Thank  
11 you, ma'am.

12 BY MR. SMYTH:

13 Q. Let me just ask you couple of  
14 questions. How do you pronounce your name?

15 A. Welfl.

16 Q. Welfl. Ms. Welfl, I am Don Smyth. I  
17 am one of the prosecutors in this case.

18 Would it be fair to say you have no  
19 opinion on whether this defendant is competent  
20 or incompetent at this point?

21 A. No, no.

22 Q. It would also be fair to say you  
23 haven't expressed an opinion to others as to  
24 whether or not you feel he is competent or  
25 incompetent?

1           A.     Not that I remember.

2           Q.     Okay.  You recall whether or not the  
3 judge gave any admonishments to you folks about  
4 not to discuss the facts of this case until you  
5 got all the evidence and you got the charge,  
6 you're all in a body together?

7           A.     All we remember him saying, because we  
8 really feel bad that this is happening, is all  
9 we remember him saying is don't discuss it with  
10 your family.  And that's why we did because we  
11 figured eventually we're going to be able to  
12 discuss it anyways; is that right?

13          Q.     Well, if you're a juror I suspect  
14 that's going to be what you're going to get.

15          A.     Sometimes when you have a question you  
16 might say, well, did you hear the same thing I  
17 heard, that this or that or this happened or  
18 that happened, and they may say, yeah, that's  
19 what I heard or, no, I didn't hear.

20          Q.     Any discussion you had at this point,  
21 would that affect your verdict?

22          A.     Absolutely not.  We haven't even heard  
23 all the testimony yet.

24          Q.     Could you set aside any discussion  
25 that you've been a part of or heard of regarding

1       this case and not do any deliberations until you  
2       actually get the case, that is, all the evidence  
3       is in, you have the court's charge on the case?

4             A.     Absolutely.

5             Q.     Okay.  Would anything that you've  
6       heard in this case you think affect whatever  
7       verdict you eventually reach?

8             A.     No.

9             Q.     Could you also promise not to discuss  
10      this case further?

11            A.     Absolutely.  Absolutely.

12            Q.     Okay.  Also promise not to discuss  
13      anything that you've heard inside this room with  
14      your fellow jurors, because I mean they may be  
15      really curious -- what did they ask you.  Could  
16      you not do that?

17            A.     Yes, yes.

18            Q.     And you don't have any opinion at this  
19      point one way or another how you'd vote?

20            A.     No.

21            Q.     Nobody expressed their opinion how  
22      they'd vote?

23            A.     No.

24            Q.     So you have not decided?

25            A.     No.

1           Q.     One way or another. Not six want  
2 stick, six want spray?

3           A.     No.

4           MR. SMYTH: I've no further questions,  
5 Your Honor.

6 BY MR. HILL:

7           Q.     I want to ask you did all twelve say  
8 they wanted spray? I never heard that  
9 particular analogy before.

10           You just made one comment about people  
11 were just generally asking a question or saying  
12 they were discussing what they heard. Did you  
13 hear the same thing, or did you hear it the same  
14 way they did?

15           A.     Uh-hum.

16           Q.     Do you have any specifics on that?

17           A.     No. I thought that you might ask  
18 me -- I can't give you any specifics, nothing.  
19 You know, we're just still listening, deciding,  
20 we don't have all the facts. There is just not  
21 any way you could in all good conscience say  
22 that you know he is, yes, this or, yes, that, as  
23 far as I'm concerned.

24           Q.     All right. Thank you.

25           A.     I'm sorry that we created this

1       problem.

2               THE COURT:   Hold on.   Hold on.  
3               Anything else?

4               MR. SMYTH:   No further questions.

5               THE COURT:   Do me a favor.   Have a  
6       seat out in the hallway if you would.

7               THE COURT:   Wayne, Denice, anybody  
8       else?

9               MR. HILL:   I'd like to get the  
10      teacher.

11              MS. CRAWFORD:   The female.   Obviously  
12      the person he rode on the elevator with.   He  
13      said he rode on the elevator with someone who  
14      sat with him the whole time.

15              MR. SMYTH:   She may not remember being  
16      on the elevator.

17              MS. CRAWFORD:   She said she came after  
18      nine.

19              MR. SMYTH:   Whatever.

20              THE COURT:   That's fishing.

21              MS. CRAWFORD:   That's not fishing.   I  
22      don't think you could characterize her as older.

23              THE COURT:   Let me know what you want  
24      to do.

25              MS. CRAWFORD:   We need to find out who

1       that woman is.

2               THE COURT:   How do we do that?   Let's  
3       get that next juror in.   How do we get that?

4               MS. CRAWFORD:   Do we call male  
5       teacher?

6               THE COURT:   Call Mr. Johnson.

7               MS. CRAWFORD:   Mr. Johnson is not male  
8       teacher.

9               MR. HILL:   He already testified.

10              MS. CRAWFORD:   He just pointed out.

11              THE COURT:   Would you ask Mr. Johnson  
12       to point out.   Now do you want Johnson or Baker  
13       to do it?

14              MR. HILL:   Mr. Baker, I guess.

15              MS. CRAWFORD:   We need the first  
16       gentleman.   He said he rode on the elevator with  
17       an older woman.

18              THE COURT:   Would you ask Mr. Baker to  
19       come in.

20              (Juror Baker enters the courtroom).

21              THE COURT:   Do me a favor.   Step in  
22       the doorway with Freddy and point out for Freddy  
23       the female juror that you think was sitting on  
24       the bench with you.

25              MR. SMYTH:   Maybe just describe a



1 piece of clothing she's wearing.

2 MR. HILL: Instead of pointing like  
3 that's her.

4 THE COURT: Just step back in.

5 THE JUROR: She was sitting next to  
6 this wall with female school teacher.

7 THE COURT: Mr. Baker, do me a favor.

8 THE JUROR: Not the white-haired  
9 lady.

10 THE COURT: Mr. Baker, stand in that  
11 doorway. Mr. Baker, if it's her, just nod, step  
12 outside.

13 (Juror McNally enters the courtroom).

14 (Juror Baker nodded at this time).

15 THE COURT: Ma'am, how are you doing?

16 THE JUROR: Fine.

17 THE COURT: You've done nothing wrong.

18 THE JUROR: I didn't think I had.

19 THE COURT: Well, you haven't, but we  
20 need to find out what you all talked about out  
21 in the hallway this morning.

22 THE JUROR: Out there in that  
23 hallway?

24 THE COURT: Yeah. So let me tell you  
25 what I'm going to do. I'll put you under oath

1 as a witness. These lawyers, I'm going to let  
2 them do it, they just want to find out what you  
3 all talked about. You've done nothing wrong,  
4 you're in no trouble, we just need for you to be  
5 honest, candid about what you all talked about.

6 (Oath administered to juror).

7 THE COURT: Be seated right up here.

8 EXAMINATION

9 BY MR. HILL:

10 Q. Ms. McNally, I am Wayne Hill. How you  
11 doing today?

12 A. Fine.

13 Q. I'll keep my questions as brief as  
14 possible. First of all, you're a member of the  
15 jury in this case, State of Texas versus Gerald  
16 Eldridge?

17 A. Yes.

18 Q. And the testimony is still  
19 continuing. We had a break in the action from  
20 yesterday's testimony until this morning.

21 A. Uh-hum.

22 Q. Do you recall sitting out in the  
23 hallway, outside this small courtroom, and  
24 conversing with some of the other members of the  
25 jury?

1           A.     Yes.     Four of us were out there.

2           Q.     Okay.   Just tell us in your own words  
3 what was being said.

4           A.     Okay.   They were talking about, one  
5 gentleman said, I don't know their names, I  
6 don't know any of their names, one gentleman  
7 said that he wanted, he thought we should hear  
8 something about the letter that his mother  
9 wrote, and let me think. One of them said, no,  
10 I'm not sure they didn't say that until they got  
11 in here. One gentleman said something about he  
12 would like to know what the man did, what the  
13 crime was he did. I really don't remember much  
14 of anything else. I really don't because I  
15 wasn't really paying attention to them.

16          Q.     Okay.   Did you have any comments that  
17 you made, either in the hallway or in the  
18 waiting area?

19          A.     I said one thing. I said, yeah, I'd  
20 like to know what the letter said that his  
21 mother wrote. I believe that was the only thing  
22 I mentioned.

23          Q.     Okay.   Was there any discussion among  
24 the people, either when it was only four of you  
25 in this hallway or when there were more of you

1 in the waiting area here, regarding the relative  
2 weight the different witnesses that had  
3 testified? You know, who's more believable, who  
4 has more credibility, anything like that?

5 A. Yes, somebody did say something about  
6 that. They were discussing that. I'm trying to  
7 think now what they said.

8 Q. Okay.

9 A. One gentleman said he thought one guy  
10 was more believable than the other guy.

11 Q. Okay. Did he identify which guy he  
12 was talking about?

13 A. Yeah, he said the first gentleman, the  
14 first doctor was not as believable as the second  
15 doctor.

16 Q. Did he indicate why he felt that way?

17 A. No. Huh-uh. They were just talking  
18 back and forth.

19 Q. In the course of talking back and  
20 forth, what type of discussion was taking place  
21 regarding that first witness?

22 A. Not really very much. It was just  
23 they thought they believed the second doctor  
24 more than they believed the first doctor.

25 Q. You say they. There obviously was

1 more than one person?

2 A. Yeah, two gentlemen talking mostly.

3 Q. Did they appear to be in agreement  
4 with one another in what they were talking  
5 about?

6 A. Nobody really said whether they agreed  
7 or not, they were just conversing. Nobody  
8 really made it a statement that they thought one  
9 was, you know, that they made up their mind.

10 Q. Do you recall any comments about what  
11 a juror could expect a particular witness to  
12 testify about? By that I mean was there any  
13 comments made about, well, we can expect the  
14 defense expert, quote, unquote, to testify a  
15 certain way because they've been paid by the  
16 defense?

17 A. Oh, no.

18 Q. Or they've been paid by the court or  
19 anything?

20 A. No, I never heard that, huh-uh.

21 Q. Okay.

22 A. No. Basically I thought they were  
23 just talking in general.

24 Q. All right.

25 A. Hashing the idea out.

1           Q.    All right.  Was there a continuation  
2 of that discussion once you all went into the  
3 anteroom?

4           A.    Well, a lot more people came in, and  
5 they started talking about a whole bunch of  
6 stuff.  They did mention the letter again.  
7 Somebody mentioned the letter again, they would  
8 like to know what was in the letter.  Somebody  
9 said something about evidence, you know, we were  
10 wondering what we would get as evidence.

11          Q.    Okay.  So you all were generally --

12          A.    And nobody really knew what they were  
13 going to get as evidence.

14          Q.    Were you all generally having a  
15 discussion about the evidence you had heard?

16          A.    No.

17          Q.    What testimony was already given?

18          A.    Most of us didn't bother to join in.

19          Q.    Really?

20          A.    Yeah.  It was really about four people  
21 that were doing most of the talking.

22          Q.    So you weren't an active participant  
23 then with the others?

24          A.    No.

25          Q.    Like preliminary deliberations?

1           A.    No.

2           Q.    What time is it by your watch right  
3 now?

4           A.    It's twenty minutes to twelve.

5           Q.    Okay. We're still in the morning  
6 session, it's not noon yet?

7           A.    No.

8           Q.    How long have you been here at the  
9 courthouse and either sitting on the bench with  
10 the other people or in this outside room?

11          A.    Okay, I believe I came upstairs at  
12 about ten minutes to nine. I think it was about  
13 ten minutes to nine that I came upstairs.

14          Q.    So you are going on maybe two and a  
15 half hours of being here?

16          A.    Uh-hum, yeah.

17          Q.    When you first got here two and a half  
18 or more hours ago was when you went to the bench  
19 outside there?

20          A.    Yeah, uh-hum. I think there was three  
21 of us. No, it was four of us at that time.

22          Q.    You just came into the courtroom and  
23 the judge just gave you the instructions that  
24 obviously you hadn't done anything wrong or  
25 anything?

1 A. Uh-hum.

2 Q. He wanted to hear what, if anything,  
3 you had to say. How long do you think you've  
4 been in the courtroom here?

5 A. Oh, no more than five minutes.

6 Q. Okay. Relatively short period of  
7 time?

8 A. Uh-hum, yeah.

9 Q. Were any instructions given to you  
10 prior to coming into this room that you're not  
11 to be talking about the case?

12 A. You mean today?

13 Q. Yes, ma'am?

14 A. No, huh-uh, no.

15 Q. So from the time you came in here, you  
16 knew that other people had been summoned in one  
17 at a time?

18 A. Yes.

19 Q. Did anybody come out and tell you that  
20 you were not to be discussing the case in any  
21 way?

22 A. Not that I heard.

23 Q. Okay.

24 A. No. I didn't hear anybody say that.

25 Q. Okay. Thank you. I have no further



1 questions.

2 A. Yes, sir.

3 BY MR. SMYTH:

4 Q. Ms. McNally, I am Don Smyth. I'm with  
5 the district attorney's office.

6 Have you formed an opinion as to which  
7 way you'd vote on this case at this point?

8 A. No, I sure haven't.

9 Q. You obviously haven't heard all the  
10 testimony?

11 A. No.

12 Q. Haven't received the judge's charge  
13 telling you what the law is?

14 A. No.

15 Q. Has anybody told you that they formed  
16 an opinion that they're going to vote one way or  
17 another?

18 A. No, they sure haven't.

19 Q. Nobody has expressed that one way or  
20 another?

21 A. No, sure haven't. In fact, nobody  
22 tried to tell anybody else how to vote.

23 Q. Okay.

24 A. Nobody said a word about that.

25 Q. You didn't take any kind of straw

1 poll; did you?

2 A. No.

3 Q. Among yourselves to see how anybody  
4 was leaning or what the count might be at this  
5 point?

6 A. Oh, no, huh-uh.

7 Q. Do you recall the judge admonishing  
8 you yesterday about not to be talking with your  
9 friends, relatives, co-workers?

10 A. Yes, that's right.

11 Q. Do you recall whether or not the judge  
12 at anytime told you not to be talking among  
13 yourselves about this case?

14 A. Not that I remember.

15 Q. Okay. Would this discussion that you  
16 heard, either you may have said a few things or  
17 mainly you just sat and listened, would that  
18 have any effect on the way you think you'd vote?

19 A. No. I tend to make up my own mind  
20 about things.

21 Q. Could you set aside anything you heard  
22 so far outside the discussion among the people,  
23 whether it was three or four people in the hall  
24 or?

25 A. Uh-hum.

1           Q.    Or ten or eleven in this anteroom, and  
2   make your decision based on what you hear in  
3   this courtroom, you know, after you get all the  
4   evidence, after you get the charge, after you  
5   deliberate?

6           A.    No, I want to wait, because like we  
7   said yesterday, we have more witnesses to hear.

8           Q.    Okay. Could you promise the judge  
9   that you would, and the attorneys in this case,  
10   that you would not participate in any  
11   discussions about what this case, how it ought  
12   to be determined until you hear all the  
13   evidence, get the court's charge?

14          A.    Oh, no, I won't say a word, nothing.

15          Q.    Could you also promise all of us that  
16   you won't say anything to any of the other  
17   people that haven't been in here, then the ones  
18   that have been in here and gone out about what  
19   was asked of you in this room?

20          A.    No, I won't say a word.

21          Q.    Just conversation between us. If we  
22   wanted everybody to hear, we'd have them all in  
23   here listening.

24          A.    That's right. No, I won't say  
25   anything.

1           Q.    So, it'd be fair to say, as far as you  
2 know, nobody has made up their mind in this case  
3 one way or another?

4           A.    Not that I could discern. I did not  
5 hear anybody actually say they would go one way  
6 or the other.

7           MR. SMYTH: I've no further questions,  
8 Your Honor.

9           MR. HILL: I have no further questions  
10 judge.

11           Thank you, ma'am.

12           THE COURT: Ma'am, if you would step  
13 outside, have a seat.

14           A.    This little door here?

15           THE COURT: Yes.

16           A.    Okay.

17           (Off the record).

18           THE COURT: Have Mr. Johnson come in.

19           Do you think you know which one it  
20 is?

21           THE BAILIFF: No, sir, I do not.

22           (Off the record).

23           THE COURT: Come on up, please, sir.

24           THE JUROR: I am the next contestant  
25 on the Price Is Right?

1                   THE COURT:   You've done nothing  
2 wrong.   You're not in trouble at all.

3                   THE JUROR:   Well, I feel like I'm in  
4 trouble.

5                   THE COURT:   That's why I'm telling  
6 you, you're not in trouble, you've done nothing  
7 wrong; however, we need to talk to you about  
8 what was discussed outside the courtroom this  
9 morning.   Okay, before we do that, I need to put  
10 you under oath as a witness.   Please raise your  
11 right hand.

12                   (Oath administered to juror at this  
13 time).

14                   THE COURT:   Answer truthfully,  
15 candidly.   No problem.   You're not in trouble,  
16 cannot get in trouble.   Okay.   Anyway, have a  
17 seat up here.   I'm going to let these lawyers  
18 ask you some questions so we can find out what  
19 happened this morning.

20  
21  
22  
23  
24  
25

EXAMINATION

BY MR. HILL:

Q. Good morning, sir. My name is Wayne Hill. I'm one of the attorneys for Mr. Eldridge. You're a juror in this case?

A. Yes, sir.

Q. And you've been a juror along with the other eleven individuals that were sworn in yesterday to serve on the jury; is that correct?

A. That's correct, sir.

Q. Have you been present at all times when the testimony has been presented to the jury?

A. Yes, sir.

Q. All right. Approximately what time did you arrive up here this morning to come in, in your service as a juror?

A. 9:15, 9:20.

Q. Okay. And where did you go when you first arrived here?

A. To the room behind the courtroom.

Q. Okay. Was there ever a point in time when you were outside in the hallway with any of the other jurors?

A. No, I was inside the whole time, I think.

1           Q.    So, as soon you walked up, you walked  
2 right into that waiting room?

3           A.    Yes. There was nobody in the hall  
4 when I got here, everybody was inside.

5           Q.    Okay. Once you went inside the  
6 waiting area, is what we call it, the room where  
7 there are like maroon colored chairs and stuff  
8 for jurors to sit, did you have an occasion to  
9 engage in any conversations regarding the case?

10          A.    There was some discussion about the  
11 things that we had heard.

12          Q.    Could you share with the court what  
13 those discussions were?

14          A.    I don't know any particulars that were  
15 discussed. I mean, I don't remember. Some of  
16 the things I remember we had discussed maybe  
17 what certain witnesses had said. I don't even  
18 remember any particulars.

19          Q.    Okay. Do you recall what type  
20 witnesses you were discussing? Would they have  
21 been expert witnesses versus a citizen?

22          A.    We had discussed, part of what was  
23 said or asked was if after the defense rests, if  
24 they could call any more witnesses. One thing  
25 was said the young black gentleman that

1 testified yesterday, I don't, I don't remember  
2 exactly.

3 Q. What was the gist of the comment, if  
4 you recall?

5 A. At this time, it escapes me. I don't  
6 really know exactly what was said. I don't  
7 think what was said was based about anything in  
8 particular, maybe just about what was said. It  
9 escapes me at this time. I don't know.

10 Q. You've been here for about two and a  
11 half hours today; is that a fair estimate of  
12 time?

13 A. Yes, sir.

14 Q. Do you recall anything in particular  
15 that you discussed out in the waiting area with  
16 the other jurors?

17 A. Well, after everybody started coming  
18 in here, one by one, we discussed whether it was  
19 wrong to have any discussion between us. We  
20 were all fairly sure that the judge here had  
21 said do not discuss anything with your family or  
22 friends, and it was said out there that none of  
23 us had done that.

24 Q. Right.

25 A. We were all a little unsure about what



1 or if anything we had said, you know, between  
2 ourselves, you know, might cause any damage to  
3 the case or whatever, but nothing. Any  
4 particular conversations had has not made an  
5 impression so that I am recalling what was said.

6 Q. Do you feel like, once you're finally  
7 put in a position of deliberating the outcome of  
8 the case, whether it be today or tomorrow, I  
9 don't know, but do you feel that you will be  
10 able to sufficiently recall what took place in  
11 that waiting room? Are you going to be able to  
12 remember at that point when you're deliberating?

13 A. I think, when it comes time for  
14 deliberation, we'll be able to actually, I think  
15 what was said out there may be said very  
16 carefully or whatever as to not to try to impose  
17 any opinions or anything like that, maybe just  
18 some particular things that witnesses may have  
19 said, but if I recall correctly there was  
20 nothing said to, at least in my mind nothing  
21 said to, I don't know, to put an opinion in or  
22 say this is the way I feel or this is what this  
23 made me feel like. It was more or less, you  
24 know, I can't recall exactly what was said, but  
25 my opinion from what I remember, what I think I